

June 26, 2008

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Feldesman, Tucker & Leifer

Date of Filing: May 29, 2008

Case Number: TFA-0259

On May 29, 2008, Feldesman, Tucker & Leifer (Feldesman) appealed a determination issued by the Corporate Services Division of the Office of Headquarters Procurement Services (Procurement) of the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In its appeal, Feldesman contends that the Department failed to conduct an adequate search for documents responsive to its request. This Appeal, if granted, would require an additional search for responsive material.

I. Background

Feldesman filed a request in which it sought the following information: (1) a copy of any DOE contracts, agreements, grants, payment-related documents, and memoranda concerning or relating to the provision of small business conference event management services with the Veterans Corporation (TVC) (also known as the National Veterans Business Development Corporation) during calendar years 2006-2008, as well as subcontracts, subcontract approvals, and related material; (2) a copy of the proposal that TVC submitted to DOE to provide small business conference event management services; (3) DOE's contract, grant or other files for small business conference event management services provided by TVC; and (4) correspondence, memoranda, or other written material concerning or relating to TerraCom, Inc., TVC and the DOE Small Business 2007 Conference. *See* Appeal Letter at Attachment 3. Procurement issued a determination which stated that it found no proposal documents, correspondence, memoranda, or other written material concerning or relating to TerraCom Inc., TVC and the DOE Small Business 2007 Conference responsive to Feldesman's request. In addition, Procurement located and released one responsive document, Purchase Order Number DE-A01-07WO19945. However, it withheld portions of the document pursuant to FOIA Exemption 4. In its Appeal, Feldesman challenges the adequacy of the search conducted by Procurement.

## II. Analysis

We have held that a FOIA request deserves a thorough and conscientious search for responsive documents. When we have found that a search was inadequate, we have consistently remanded the case and ordered a further search for responsive documents. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (2002); *Marlene R. Flor*, 23 DOE ¶ 80,130 (1993); *Native Americans for a Clean Environment*, 23 DOE ¶ 80,149 (1993). However, the FOIA requires that a search be reasonable, not exhaustive. “The standard of reasonableness that we apply to the agency search procedures does not require absolute exhaustion of files; instead it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985).

In reviewing the present Appeal, we contacted officials in Procurement to ascertain the scope of the search. Feldesman originally submitted its FOIA request to the DOE Headquarters FOIA Office (DOE-HQ). DOE-HQ then transferred its request to Procurement for a direct response to the requester. Procurement officials informed us that they conducted a search of their database by the relevant contract numbers, names and keywords (i.e., the National Veterans Business Corporation), and were able to locate one responsive document. Procurement provided this document, Purchase order Number DE-A01-07WO19945, to Feldesman, but redacted commercial and financial information under Exemption 4. Procurement informed us that it did not locate any other responsive information. *See* Record of Conversation between Phyllis Morgan and Craig Ashline, Procurement, and Kimberly Jenkins-Chapman, OHA (June 17, 2008). Given the facts presented to us, we are convinced that Procurement conducted an adequate search that was reasonably calculated to uncover documents responsive to Feldesman’s request.

During the course of this Appeal, DOE-HQ informed us that it will forward Feldesman’s request to DOE’s Small Business Office within the Office of Economic Impact and Diversity to search for responsive documents. That office will respond directly to Feldesman. Accordingly, this Appeal is hereby remanded to DOE-HQ to conduct a new search for information responsive to Feldesman’s request.

It Is Therefore Ordered That:

- (1) The Appeal filed by Feldesman, Tucker & Leifer, OHA Case No. TFA-0259, on May 29, 2008, is hereby granted as set forth in paragraph (2) below and denied in all other respects.
- (2) This matter is hereby remanded to the DOE Headquarters FOIA Office for further processing in accordance with the instructions set forth in the Decision and Order.
- (3) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought

in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: June 26, 2008